

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1976

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

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NO.76-1293

FRANK L.SILVERMAN, ET UX.,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT

PETITIONERS REPLY

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In reply of the petitioners to the respondent's memorandum in opposition to the writ, the following facts are respectfully submitted by the petitioners for the Court attention and consideration.

The minutes of July 7, 1976, in the Tax Court, page A-727, lines 3 to 7:-

" I can't take any longer. I'm kind of dizzy now. Can I have some water, please?  
The Court? - Well, I'll tell you, Mr. Silverman, that as of now, you are not prepared to proceed

(1)

any further, is that right?"

The Court knew at that time that the petitioner was in a state of shock and was unable to proceed and yet the said Tax Court directed the petitioner to sign a stipulation upon which this writ is respectfully directed.

The Commissioner turned over in excess of 1000 exhibits at or before the 24th day of February, 1976, on the eve of trial.

The transcript of the minutes of February 24, 1976, in the Tax Court is herewith submitted, page A-369 as follows:-

Mr. Silverman: I would like to make a specific and pointed request of the Court. I received all these papers, if your honor will notice on the desk, late last week, and it's physically impossible to give them a thorough examination to shift-- pick out what's important-- what isn't important, so perhaps after I look at those papers, Mr. Brodsky and I can go into a further stipulation, taking away much lost time from the Court and from ourselves. For this reason, your honor, at this time, I'm going to ask for a continuance of this case, for a reasonable time.."

Even on said date the Commissioner submitted additional exhibits to the Tax Court without first furnishing copies to petitioners.

(2)

The Tax Court's denial of the motions for the bills of particulars and the discovery and inspection motion was tantamount to a denial of due process to the petitioners in this case.

That in addition to the above, the Commissioner submitted to the Tax Court new and different schedules than the schedules of the tax deficiencies, or in the amended answers.

In the record on appeal (A-402 lines 1-25) Revenue Agent, Calvin Wallace, testified;

" The bank deposit is -- the--our analysis of the bank accounts is new. Continuing; How about the major unexplained deposits? That was new too. The unexplained deposit schedules were new".

That in view of what transpired in the Tax Court, June 24, 1976, and in view of the Court's pronouncement made by the same Judge, September 22, 1975, (R.A-350, lines 23-25) petitioners respectfully requested a mistrial.

" THE COURT: -- same thing before. And that's why I don't want to try your case, frankly, because I'd be the first to admit, I'd have a hard time being patient".

The petitioners request for a mistrial was denied by the Tax Court. The Court continued the case to July 7, 1976, on its own motion.

The Commissioner in his memorandum in opposition to the petitioners' writ fails to indicate that between June 25, 1976 to July 7, 1976, there are eleven days, and that on July 7, 1976, the petitioner became ill and was in a state of collapse and in shock. Even the Tax Court noticed that the petitioner was ill by making the following comment:- (R.A.727 lines 3 -7)

" By the Court:- Well as of now, I'll tell you Mr. Silverman, that as of now, you are not prepared to proceed any further, is that right?.

The Tax Court did not afford petitioners an adequate opportunity by denying petitioners a bill of particulars and the discovery and inspection motion so as properly prepare for trial and meet the issues in this tax case .

Petitioners submitted to the Tax Court Court schedules of cases indicating the payments made to clients See pages 56 to 66 exhibits 1A-A-B-C-D-1E. of Petition.



which were not credited to the petitioners of the Commissioner's schedules.

The petitioner upon regaining his well being immediately made an application before the Tax Court, pursuant to Rule 161 and 162 of the United States Tax Court Rules with respect to the omissions in the schedules of funds that were paid out to clients, that motion too was denied by the Tax Court, without any opposing papers having been submitted by the Commissioner. (See page 55 exhibit "F" of the petitioners' petition).

For all of the foregoing reasons and in the interest of justice ,it is respectfully urged upon this Court to grant petitioners Writ of Certiorari in this matter.

RESPECTFULLY SUBMITTED

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